

REMARKS/ARGUMENTS

The Examiner has withdrawn the requirement for the selection of one mental disorder and is examining only claims 1-14 and nitroimidazole as the antimicrobial composition.

On page 3 of the Office Action, the Examiner conceded that the specification is enabling for a method of treating an individual exhibiting symptoms of autistic disorder and atypical psychosis, the method comprising administering to the individual a nitroimidazole as an antimicrobial composition to inhibit or eliminate the symptoms of the disorder. However, the Examiner rejected claims 1-14 under 35 U.S.C. 112, first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most connected, to make and/or use the invention. Claims 1-14 have been amended in accordance with the portions of the specification deemed enabling by the Examiner so as to enable one skilled in the art to which it pertains, or with which it is most connected, to make and/or use the invention, and thus should be allowable. Accordingly, the claims should be in condition for allowance.

Furthermore, page 4 of the Office Action, the Examiner states that undue experimentation is required to enable the full scope of the claims. In order for the claims to be enabling, the scope of the claims must bear a reasonable correlation to the scope of enablement provided by the specification to persons of ordinary skill in the art. In re Fisher, 427 F.2d 833, 839, 166 USPQ 18, 24 (CCPA 1970). Applicant's amended claims 1-7 have a

scope that bears a reasonable correlation to the scope of enablement provided by the specification to persons of ordinary skill in the art. Claims 1-14 have been amended in accordance with the portions of the specification deemed enabling by the Examiner so as to enable one skilled in the art to which it pertains, or with which it is most connected, to make and/or use the invention, and thus should be allowable. Accordingly, the claims should be in condition for allowance.

Moreover, as discussed with the Examiner, Sandler et al., CID 30, 213-214 (January 2000), is authored by the Applicant. A declaration under 37 CFR 1.131 to overcome this publication has been signed by the Applicant and is attached hereto.

On page 7 of the Office Action, the Examiner rejected claims 8-14 under 35 U.S.C. 112, first paragraph as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most connected, to make and/or use the invention. Claims 8-14 have been cancelled from the present application. Accordingly, claims 1-7 should be in condition for allowance.

On page 8 of the Office Action, the Examiner rejected claims 1, 3-8, and 10-14 under 35 U.S.C. 112, second paragraph as being indefinite for failing to point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 3 and 8-14 have been cancelled and claims 1, 2, and 4-7 have been amended in order to clear the indefiniteness

from its respective limitations, and thus should be allowable. Accordingly, the claims should be in condition for allowance.

Rejections under 35 U.S.C. § 102

On page 9 of the Office Action, the Examiner rejected claims 8-12 under 35 U.S.C. § 102(b) as being anticipated by the website of UWHC Antimicrobial Use Guide, Eight Edition, July 1995-June 1996. Applicant has cancelled claims 8-14 and thus respectfully traverses this rejection.

Accordingly, claims 1-7 are allowable in view of this reference and Applicant respectfully requests a withdrawal of this rejection.

Also on page 9 of the Office Action, the Examiner rejected claim 13 under 35 U.S.C. § 102(b) as being anticipated by the website of INCHEM. Applicant has cancelled claims 8-14 and thus respectfully traverses this rejection.

Accordingly, claims 1-7 are allowable in view of this reference and Applicant respectfully requests a withdrawal of this rejection.

Additionally, on page 9 of the Office Action, the Examiner rejected claims 1-5 under 35 U.S.C. § 102(a) as being anticipated by Sandler et al., CID 30, 213-214 (January 2000) entitled, "Relief of Psychiatric Symptoms in a Patient with Crohn's Disease After

Metronidazole Therapy." Applicant respectfully traverses this rejection.

As stated above, Applicant is an author of the Sandler et al. publication. A declaration under 37 CFR 1.131 to overcome this publication, including supporting statements by the Applicant and Richard H. Sandler, has been signed by the Applicant and is attached hereto. As stated below, an affidavit or declaration of prior invention under 37 CFR 1.131 can be used to overcome cited patent or publication:

"(a) (1) When any claim of an application or a patent under reexamination is rejected under 35 U.S.C. 102(a) or (e), or 35 U.S.C. 103 based on a U.S. patent to another or others which is prior art under 35 U.S.C. 102(a) or (e) and which substantially shows or describes but does not claim the same patentable invention, as defined in 1.601(n), or on reference to a foreign patent or to a printed publication, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to overcome the patent or publication. The oath or declaration must include facts showing a completion of the invention in this country or in a NAFTA or WTO member country before the filing date of the application on which the U.S. patent issued, or before the date of the foreign patent, or before the date of the printed publication. When an appropriate oath or declaration is made, the patent or publication cited shall not bar the grant of a patent to the inventor or the confirmation of the patentability of the claims of the patent, unless the date of such patent or printed publication is more than one year prior to the date on which the inventor's or patent owner's application was filed in this country.

(b) The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence satisfactorily explained." 37 CFR 1.131


Accordingly, claims 1-7 are allowable in view of this reference and Applicant respectfully requests a withdrawal of this rejection.

Conclusion

Having analyzed the rejections cited against the claims, it is urged that the present claims are in condition for allowance. A favorable reconsideration is requested. The Examiner is invited to contact the undersigned attorney to discuss any matters pertaining to the present application.

Respectfully submitted,

Date: June 3, 2003

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CERTIFICATE OF TRANSMISSION – 37 CFR 1.8

I hereby certify that this Amendment and Declaration are transmitted, by facsimile, to the U.S. Patent and Trademark Office, Group/Art Unit 1653 for the attention of Examiner Chih-Min Kam (Fax No. 1-703-872-9306) in accordance with 37 CFR §1.6(d).

 /Vernice V. Freebourne

June 3, 2003 /Date